

Oren B. Haker, OSB No. 130162  
Crystal S. Chase, OSB No. 093104  
STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
Telephone: (503) 224-3380  
Facsimile: (503) 220-2480

Attorneys for Defendants Bank  
of New York Mellon as Trustee and  
Select Portfolio Servicing, Inc.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

In re

LORI DIANE BACZKOWSKI,  
  
Debtor.

Case No. 15-62839-fra13

LORI DIANE BACZKOWSKI,  
  
Plaintiff,

v.

BANK OF NEW YORK MELLON, F/K/A  
THE BANK OF NEW YORK, AS  
TRUSTEE, ON BEHALF OF THE  
HOLDERS OF THE ALTERNATIVE  
LOAN TRUST 2007-23CB, MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES 2007-23CB, QUALITY LOAN  
SERVICE CORPORATION OF  
WASHINGTON, SELECT PORTFOLIO  
SERVICING, INC.,  
  
Defendants.

Adversary Proceeding No. 15-06085-fra

ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANTS BANK  
OF NEW YORK MELLON, F/K/A THE  
BANK OF NEW YORK, AS TRUSTEE,  
ON BEHALF OF THE HOLDERS OF  
THE ALTERNATIVE LOAN TRUST  
2007-23CB, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES  
2007-23CB AND SELECT PORTFOLIO  
SERVICING, INC.

Defendants Bank of New York Mellon, f/k/a The Bank of New York, as Trustee, on  
Behalf of the Holders of the Alternative Loan Trust 2007-23CB, Mortgage Pass-Through

Page 1 - ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS BANK OF  
NEW YORK MELLON AS TRUSTEE AND SELECT PORTFOLIO  
SERVICING, INC.

Certificates, Series 2007-23CB (the “**Trust**”) and Select Portfolio Servicing, Inc. (“**SPS**”) (collectively, “**Defendants**”), by and through their undersigned counsel, for their Answer and Affirmative Defenses to the Complaint (the “**Complaint**”) filed by Plaintiff Lori Diane Baczkowski (*pro se*) (“**Debtor**”), states as follows:

### 1. Parties and Jurisdiction

1. In response to paragraph 1 “Parties and Jurisdiction,” Defendants admit that Debtor is the owner of property located at 6101 Fish Hatchery Road, Grants Pass, Oregon 97527, which she purchased with a loan (“**Loan**”) evidenced by a promissory note in the amount of \$200,000 (“**Note**”) that was secured by a Deed of Trust recorded in the real property records of Josephine County on July 9, 2007 as Instrument No. 2007-013283 (“**Trust Deed**”). Defendants further admit that the Trust is the holder of the Note and Trust Deed and that SPS is the servicer on the Loan. Defendants further admit that SPS is a Utah corporation with its principal place of business in Salt Lake City, Utah, and that SPS is registered to do business in Oregon. The allegations relating to Defendant Quality Loan Service Corporation do not relate to Defendants and therefore no response is required by Defendants as to those allegations. The records of the Oregon Secretary of State speak for themselves and therefore no further response as to the allegations of the contents of those records is required. The allegations regarding jurisdiction are legal conclusions that do not require a response. Except as expressly admitted, Defendants deny each of the allegations in paragraph 1.

### 2. Adversary

2. In response to paragraph 2, “Adversary,” Defendants lack information sufficient to admit or deny the allegations in the first sentence of paragraph 2, and on that basis deny them. Defendants deny the allegations in the second sentence of paragraph 2.

### 3. Rule 7008 statement

3. In response to paragraph 3, “Rule 7008 statement,” Defendants admit that this proceeding is non-core and Defendants consent to entry of a final order or judgment by the United States Bankruptcy Court for the District of Oregon (“**Bankruptcy Court**”). The remaining allegations in paragraph 3 are legal conclusions which do not require a response. Except as expressly admitted, Defendants deny each of the allegations in paragraph 3.

### 4. Judgment sought

4. In response to paragraph 4, “Judgment sought,” Defendants deny each of the allegations in paragraph 4 and specifically deny that the Debtor is entitled to any of the relief requested.

### 5. Injunctive relief

5. In response to paragraph 5, “Injunctive relief,” Defendants deny each of the allegations in paragraph 5 and specifically deny that the Debtor is entitled to any of the relief requested.

### 6. Recovering my costs and disbursements

6. In response to paragraph 6, “Recovering my costs and disbursements,” Defendants deny each of the allegations in paragraph 6 and specifically deny that the Debtor is entitled to any of the relief requested.

### 7. Request for relief

7. In response to paragraph 7, “Request for relief,” Defendants deny each of the allegations in paragraph 7 and specifically deny that the Debtor is entitled to any of the relief requested.

## **AFFIRMATIVE DEFENSES**

### First Affirmative Defense

(Waiver / Estoppel)

8. The Debtor's claim in this proceeding is barred by waiver and/or estoppel.

### Second Affirmative Defense

(Failure to State a Claim)

9. The Debtor fails to state a claim for relief.

### Third Affirmative Defense

(Reservation of Additional Defenses)

10. Defendants' review of the Debtor's claim is ongoing and Defendants reserve the right to assert additional affirmative defenses as the case proceeds.

WHEREFORE, Defendants pray for judgment as follows:

1. That the Debtor's complaint be dismissed with prejudice;
2. For its attorney fees, costs and disbursements; and
3. For such other relief as the Bankruptcy Court deems just and proper.

DATED: October 14, 2015.

STOEL RIVES LLP

/s/ Oren B. Haker

OREN B. HAKER, OSB No. 130162

CRYSTAL S. CHASE, OSB No. 093104

Telephone: (503) 224-3380

Facsimile: (503) 220-2480

oren.haker@stoel.com

crystal.chase@stoel.com

Attorneys for Defendants Bank of New York  
Mellon as Trustee and Select Portfolio  
Servicing, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS BANK OF NEW YORK MELLON AS TRUSTEE AND SELECT PORTFOLIO SERVICING, INC.** by electronic notice via CM/ECF on the date indicated below to the following:

- Naliko Markel    ecf@eugene13.com
- CASEY C PENCE    bknotice@mccarthyholthus.com
- US Trustee, Eugene    USTPRegion18.EG.ECF@usdoj.gov

and by mailing with postage prepaid on the date indicated below to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Lori Diane Baczkowski  
1025 NE Fall Dr  
Grants Pass, OR 97526

DATED: October 14, 2015.

STOEL RIVES LLP

/s/ Oren B. Haker

OREN B. HAKER, OSB No. 130162  
CRYSTAL S. CHASE, OSB No. 093104  
Telephone: (503) 224-3380  
Facsimile: (503) 220-2480  
oren.haker@stoel.com  
crystal.chase@stoel.com

Attorneys for Defendants Bank of New York Mellon  
as Trustee and Select Portfolio Servicing, Inc.